

Permittee: Hercules L. Bacus and Brian T. Brager  
Project Name: Calle Oriente Certificate of Compliance

File No. 100.03.023.C  
Private Job Account No. PJ 2452  
Improvement Plan No.: 2-1069

## PERMITTEE DEDICATION AND IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this \_\_\_\_ day of \_\_\_\_\_, 200 , at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and Hercules L. Bacus and Brian T. Brager (hereafter referred to as "Permittee"):

### W I T N E S S E T H

Pursuant to applicable ordinances and resolutions of City, and in consideration of the mutual terms, covenants and conditions herein, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

#### 1. DEDICATION

(a) Permittee offers to dedicate the real property shown on **Exhibit "A"** (attached hereto, hereby referred to made a part hereof) as **Public Service Utility Easement (PSUE)**. Said dedicated property shall be free and clear of all liens and encumbrances except those as City shall expressly waive in writing. Permittee agrees not to revoke said offer of dedication, and to keep said offer open until City accepts said offer by resolution.

(b) Upon execution of this agreement Permittee agrees to deliver a properly executed grant deed to City of the real property described in **Exhibit "A"** and such other executed conveyances or instruments necessary to convey clear title as herein required. Permittee shall provide at Permittee's sole cost and expense, to City:

1. A preliminary title report issued by a title insurance company relating to the property offered for dedication; said Preliminary Title Report shall be furnished prior to execution of this agreement.

(c) Upon the condition precedent that Permittee shall perform each and every covenant and condition of this agreement, City agrees to accept said real property offered for dedication.

#### 2. IMPROVEMENTS

Permittee agrees that it will construct at its sole cost and expense all those certain improvements set forth in **Exhibit "B"**, (attached hereto, hereby referred to and made a part hereof) **as undergrounding of overhead wires and off site improvement plans for 1416, 1430 and 1444 Calle Oriente**. Said improvements shall be completed **within 24 months from the execution date of this agreement**.

#### 3. IMPROVEMENT REQUIREMENTS

Permittee agrees that it will construct said improvements in accordance with the requirements set forth in this agreement and in accordance with all applicable ordinances, resolutions and orders of City, as amended or revised as of the date of said construction, and governing statutes of the State of California or the United States of America; and in

accordance with all plans and specifications, profiles, sizes, lines and grades approved or promulgated by the Engineer for City, as of the date of said construction.

4. APPROVAL

Permittee agrees that said improvement plans shall be subject to the approval of Engineer for City and that improvements will be constructed under and subject to the inspection of and to the satisfaction of the Engineer for City. No work of improvements shall be undertaken by Permittee until all plans and specifications have been submitted to Engineer for City and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of Engineer for City.

5. FAITHFUL PERFORMANCE BOND

Upon the execution of this agreement, Permittee shall file and submit security to CITY as obligee in the penal sum of ***one hundred twenty five thousand*** dollars (***\$125,000.00***), conditioned upon the full and faithful performance of each of the terms, covenants and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder.

Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.

6. LABOR AND MATERIALS BOND

Upon execution of this Agreement, Permittee shall file and submit security to City, as obligee, in the penal sum of ***one hundred twenty five thousand*** dollars (***\$125,000.00***), insuring to the benefit of any contract, his subcontractors, and to persons renting insuring to the benefit of any contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.

7. LABOR AND MATERIALS CLAIMS

Permittee agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.

8. EASEMENTS

Any easement of right-of-way necessary for the completion of any of the improvement required of Permittee shall be acquired by Permittee at his sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, Permittee agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by City in connection with said eminent domain proceeding and any condemnation award and damages (including all costs awarded in said eminent domain proceeding, and upon ten days written notice from City, he will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.

9. GUARANTEE

Permittee agrees that, upon ten days written notice from City, Permittee will immediately remedy, restore, repair, or replace, at its sole cost and expense and to the satisfaction of Engineer for City, all defects, damages, or imperfections due to or arising from faulty materials or workmanship appearing within a period of one year after date of final completion and acceptance of all of said improvements. If Permittee shall fail to remedy, restore, repair or replace said defects, damages or imperfections as herein required, City may at its option, do so and recover the full cost and expense thereof from Permittee or Permittee's surety.

10. INDEMNIFICATION

Permittee agrees to indemnify and save harmless City, City Council, City Engineer, or any other officer or employee of City from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons, or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of Permittee, its officers, agents, employees, contractors or subcontractors.

11. INSURANCE

Prior to commencing any work, Permittee, agrees to obtain an Encroachment Permit from the Engineering Division and at Permittee's expense, provide CITY with a public liability insurance policy (or a certificate thereof acceptable to City Attorney) insuring City, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 fee each occurrence and \$1,000,000 for property damage in each occurrence) in connection with work performed by, for or on behalf of Permittee. Said Policy shall: (a) be issued by an insurance company authorized to transact business in California; (b) be written on an occurrence basis; (c) require 30 days prior written notice to City of cancellation or coverage reduction; (d) provide that it is full primary coverage so that said City, officers or employees have other insurance covered by said policy, said other insurance shall be excess insurance; (e) provide that said City, officers and employees shall not be precluded from claim thereunder; (f) be maintained in effect until acceptance of Permittee's improvements. If Permittee does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and Permittee shall forthwith repay City the premium therefor.

12. NO WAIVER

Nothing contained in this agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the City.

13. SUCCESSORS - RUN WITH LAND

This agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of Permittee. It is agreed and understood that the covenants in this agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by Permittee expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY OF MILPITAS, its successors and assigns.

14. MISCELLANEOUS

Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by Permittee hereunder shall be subject to approval of the City Attorney as to form.

15. Upon completion of the work and before City Initial Acceptance of the work thereof, Permittee shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.

16. Permittee agrees to comply with all requirements set forth on **Exhibit "C"**, (attached hereto, hereby referred to and made a part hereof).

17. In the event that Permittee fails to perform any obligation on its part to be performed hereunder, Permittee agrees to pay all costs and expenses incurred by City in securing performance of such obligation, and if suit be brought by City to enforce this agreement, Permittee agrees to pay costs of suit and reasonable attorney's fees to be fixed by Court.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
BY \_\_\_\_\_  
Permittee \*\* Date

CITY OF MILPITAS

BY \_\_\_\_\_  
City Manager Date

Approved as to form this

\_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
City Attorney

Approved as to sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
City Engineer

- Same date as on page 1
- \*\* Attach acknowledgment

Permittee: Hercules L. Bacus and Brian T. Brager  
Project Name: Calle Oriente Certificate of Compliance

Project No. PJ 2452  
File No. 100.03.023.C

**EXHIBIT "A"**  
**DEDICATIONS**

Public Service Utility Easement (PSUE) attached

Permittee: Hercules L. Bacus and Brian T. Brager  
Project Name: Calle Oriente Certificate of Compliance

Project No. PJ 2452  
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**EXHIBIT "B"**  
**IMPROVEMENTS**

Undergrounding of existing overhead wires and public improvements along Calle Oriente, including but not limited to sidewalk, Driveways, curb, and gutter removal and replacement, new ADA ramp installation, and removal of utility poles, as shown on the Off-site Improvement Plans for 1416, 1430, and 1444 Calle Oriente (Improvement Plan 2-1069)

**EXHIBIT "C"**

1. The permittee agrees to comply with all special conditions and notes of approval for this development.
2. The permittee agrees to provide security for all public improvements (Faithful Performance and Labor and Materials), and pay all related development fees (as outlined in this agreement and the approved conditions and notes of approval).

A. Fees to be paid upon execution of this agreement:

a)	Plan-check and Inspection Deposit	(PJXXXX-13-2500)	<u>\$ 12,500.00</u>
b)	Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c)	Improvement Reimbursement Fee	(310-3614-XXXX70)	<u>N/A</u>
d)	Other _____	(XXX-XXXX-XXXX)	<u>N/A</u>

**Sub-total                      \$12,500.00**

B. Fees to be paid at time of building permit issuance:

a)	Water Connection Fee	(402-3715)	<u>N/A</u>
b)	Potable Water Meter Fee	(400-3662)	<u>N/A</u>
c)	Recycled Water Meter Fee	(406-3622)	<u>N/A</u>
d)	Sanitary Sewer Connection Fee	(452-3715)	<u>N/A</u>
e)	Sewer Treatment Plant Fee	(452-3714)	<u>N/A</u>
f)	Sewer Bypass Benefit Fund	(HA1320-2500)	<u>N/A</u>
g)	Storm Drain Connection Fee	(340-3711)	<u>N/A</u>
h)	Parksite Fee		
	1. Park Dedication In-Lieu Fee	(320-3712)	<u>N/A</u>
	2. PUD Park Fee	(320-3712)	<u>N/A</u>
i)	Hillside Water Reimbursement	(HA1324-2500)	<u>N/A</u>

**TOTAL                      \$12,500.00**

Principal: \_\_\_\_\_  
Project Name: Calle Oriente Certificate of Compliance

Project No. PJ 2452  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract dated \_\_\_\_\_ with the City of Milpitas to perform the following work, to wit: \_\_\_\_\_

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of ***one hundred twenty five thousand dollars (\$125,000.00)***, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 200 .

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

PRINCIPAL: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_



Principal: \_\_\_\_\_  
Project Name: Calle Oriente Certificate of Compliance

Project No. PJ 2452  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract dated \_\_\_\_\_ with the City of Milpitas to perform the following work, to wit:

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of ***one hundred twenty five thousand dollars (\$125,000.00)***, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 200 .

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

PRINCIPAL: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_

\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 200\_\_\_\_. )

THIS JURAT MUST BE COMPLETED  
BY A NOTARY IF THE VERIFICATION  
IS EXECUTED OUTSIDE OF CALIFORNIA

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:

\_\_\_\_\_

**CITY OF MILPITAS**

**CERTIFICATE RELATING TO WORKER'S COMPENSATION  
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of the following):

\_\_\_\_\_ Any general contractor engaged by me for said work will have in full force and effect Worker's Compensation Insurance pursuant to the attached certificate of Workmen's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

\_\_\_\_\_ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on \_\_\_\_\_  
at \_\_\_\_\_.  
(Date) (City)

By: \_\_\_\_\_

\_\_\_\_\_  
Official Title

On behalf of: \_\_\_\_\_  
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND  
MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS, 888 NORTH FIRST STREET, SAN JOSE, CALIFORNIA, TELEPHONE: 277-1265.

**CITY OF MILPITAS**  
**CERTIFICATE OF WORKER'S COMPENSATION INSURANCE**

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number \_\_\_\_\_) to \_\_\_\_\_ in connection with the above project, title and developer. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
INSURANCE COMPANY

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Signature)

Address: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Type Name)

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.  
Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 200 . \*\*

\_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
(Type Name)

SUBSCRIBE D AND SWORN TO BEFORE ME, a  
Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 200 .

\_\_\_\_\_  
(Sign and type Name)

**CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE**

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number \_\_\_\_\_ to \_\_\_\_\_ in connection with a work of improvement generally described as Street and underground improvement on \_\_\_\_\_. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person ) \$1,000,000 each occurrence ) )*
(2) Property Damage			\$1,000,000 each occurrence ) \$1,000,000 aggregate )

**This policy provides:** (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

_____ Insurance Company _____ Authorized Signature (Sign) _____ Authorized Signature (Type)	Address of Signatory: _____ _____
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**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 200 . \*\*

\_\_\_\_\_  
 Authorized Signatory (Sign)

\_\_\_\_\_  
 (Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a  
 Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_  
 (Sign)

\_\_\_\_\_  
 (Type Name)

\*\* If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: \_\_\_\_\_, 200 , by \_\_\_\_\_